



# United States Department of the Interior

## BUREAU OF LAND MANAGEMENT

Salt Lake Field Office  
2370 South 2300 West  
Salt Lake City, Utah 84119  
ph: (801) 977-4300; Fax: (801) 977-4397  
[www.ut.blm.gov/saltlake\\_fo](http://www.ut.blm.gov/saltlake_fo)

IN REPLY REFER TO:  
3809 (UTW011)

NOV 04 2009



TAKE PRIDE  
IN AMERICA

RECEIVED

NOV 05 2006

Div. of Oil, Gas & Mining

Castle Rock Mfg.  
4106 W 11770 S  
South Jordan, UT 84095

Dear Mr. Powell:

On September 25, 2009, you met with Larry Garahana and Steve Allen of my staff and submitted a letter and other paperwork concerning your two unpatented mining claims (Donald 1 and Donald No 2, UMC360436 and UMC360437 respectively) located in the south half of Section 33, T. 11 S., R. 9 E., SLB&M. The documents you submitted were to "demonstrate that the minerals (limestone) located at the referenced sites are unique, uncommon, and of high quality". You discussed the possibility of mining the material on said claims under the General Mining Laws.

As stated at 3830.12:

- "(a) Minerals are locatable if they meet the requirements in Sec. 3830.11 [i.e., subject to the General Mining Laws] and are:
- (1) Recognized as a mineral by the scientific community; \* \* \*
- (b) Under the Surface Resources Act, certain varieties of mineral materials are locatable if they are uncommon because they possess a distinct and special value. As provided in *McClarty v. Secretary of the Interior*, 408 F.2d 907 (9th Cir. 1969), we determine whether mineral materials have a distinct and special value by:
- (1) Comparing the mineral deposit in question with other deposits of such minerals generally;
  - (2) Determining whether the mineral deposit in question has a unique physical property;
  - (3) Determining whether the unique property gives the deposit a distinct and special value;
  - (4) Determining whether, if the special value is for uses to which ordinary varieties of the mineral are put, the deposit has some distinct and special value for such use; and
  - (5) Determining whether the distinct and special value is reflected by the higher price that the material commands in the market place. \* \* \*
- (d) Limestone of *chemical* or metallurgical grade \* \* \* is subject to location under the mining laws."

Limestone is a rock or stone and is not a mineral as recognized by the scientific community. Thus, the determination of the locatability of the limestone proposed to be quarried by Castle Rock Mfg is dependent upon its meeting the criteria of 3830.12(b) and/or (d).

The following is case law applicable to chemical grade limestone.

In *U.S. v. Chas. Pfizer & Co., Inc.*, 76 I.D. 339, 342-343 (1969), the Department held that "limestone containing 95 percent or more calcium and magnesium carbonates is an uncommon variety of limestone which remains subject to location under the mining laws." In *U.S. v. Foresyth*, 15 IBLA 43, 59 (1974), IBLA upheld *Pfizer*.

In *United States v. Pitkin Iron Corporation, et al.*, 170 IBLA 352-360 (2006), IBLA summarized the applicable federal statutes, federal regulations, and case law with respect to common varieties of minerals and the locatability of limestone. In this decision at 170 IBLA 358, 359, IBLA again cited *Pfizer*, stating that "*Pfizer's* construction of the term 'metallurgical or chemical grade limestone' has been followed since 1969 \* \* \* Thus, limestone containing 95% or more total carbonate is per se locatable."


In addition to meeting the chemical grade, the limestone deposits in the above cases had distinct and special value as indicated by higher market value when compared to limestone used as a common variety.

On October 20, 2009, you re-submitted the letter and previous information along with some photos and recent test results on grab samples taken from the subject claims, and again discussed the possibility of mining the material for use in flue gas desulfurization (FGD) systems that are used in coal-fired, power plants to control sulfur dioxide (SO<sub>2</sub>) emissions. You also discussed possible market uses for the crushed limestone that may not require a chemical grade or locatable limestone. If the limestone or the proposed use of the limestone does not meet the requirements of a chemical grade or locatable limestone, then Castle Rock Mfg would apply for a mineral material contract under the federal regulations at 43 CFR 3600 for such quarrying and removal of limestone from public lands. As needed, these sales will be subject to appraisal for fair market value and cost recovery for processing a mineral material sale.

If Castle Rock Mfg believes the limestone located on the subject claims is locatable and if you wish to mine it as such, a plan of operations that meets the requirements of 43 CFR 3809.400 would need to be submitted to this office prior to any removal of material.

If you have any questions, or require additional information, please contact Larry Garahana of my staff at (801) 977-4371.

Sincerely,

  
Acting for Michael G. Nelson  
Assistant Field Manager,  
Nonrenewable Resources

cc: Lynn Kunzler, UDOGM  
Stephen Powell, P.O. Box 253, Castle Dale Utah, 84513